

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TENTATIVE ORDER NO. R9-2005-0230
WASTE DISCHARGE REQUIREMENTS AND
SECTION 401 WATER QUALITY CERTIFICATION**

for

BENTLEY-MONARCH J.V. / BENTEQ,

**CANTARINI RANCH
AND
HOLLY SPRINGS PROJECTS**

CARLSBAD, SAN DIEGO COUNTY

**California Regional Water Quality Control Board
San Diego Region**

Tentative Order No. R9-2005-0230

**Waste Discharge Requirements and Clean Water Act
Section 401 Water Quality Standards Certification**

For

**Bentley-Monarch J.V. / BENTEQ, Cantarini Ranch and Holly Springs Project,
City of Carlsbad, San Diego County**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

1. Bentley-Monarch J.V. / BENTEQ (hereinafter discharger) submitted an application for Clean Water Act Section 401 Water Quality Certification on July 25, 2003. The application was denied without prejudice on October 14, 2003. The discharger submitted a revised application for 401 Water Quality Certification for discharges to waters of the U.S. and State and an Application/Report of Waste Discharge for discharges to non-federal waters of the State on May 18, 2005. The discharger proposes to place fill material into waters of the U.S. and State in order to develop the adjacent Cantarini Ranch and Holly Springs properties in the City of Carlsbad, California. These waters of the U.S. and State are tributary to Agua Hedionda Creek in the Los Monos Hydrologic Subarea (HSA 904.31).
2. The proposed project would develop residential housing and associated infrastructure on the adjacent Cantarini Ranch and Holly Springs properties. The proposed project area includes Assessor's Parcel Numbers 168-050-06, 07, 26, 44, and 45; 209-060-11, 14, and 60; and 209-070-01, and 02 (Lat/Long 33°9'30" / -117°17'30"). The Cantarini Ranch parcel is bordered by El Camino Real to the south, by the Rancho Carlsbad Partners property and Rancho Carlsbad Golf Course to the west, by the Holly Springs property to the north, and by the Mandana residential property to the east. The Holly Springs parcel is adjacent to Cantarini Ranch along the northern boundary and is part of this development. The Cantarini Ranch site is 157 acres and would include 105 single-family homes and an 80-unit multiple family complex on 110 acres. The Holly Springs site is 120 acres and would include 43 single-family homes on 35 acres. A total of 118 acres on the two properties would be set aside as City of Carlsbad Habitat Management Plan open space.
3. Designated beneficial uses of waters in the project area include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Contact Water Recreation (REC 1), Non-contact Water Recreation (REC 2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD).

4. Water Code section 13263(a) requires that waste discharge requirements (WDRs) be prescribed to the proposed discharge of fill (e.g., soil, riprap, culverts) into 2.39 acres of waters of the State. The discharge of fill to 2.22 of the 2.39 acres requires permitting subject to Sections 401 and 404 of the federal Clean Water Act [33 USC 1342 & 1344] because the fill locations are determined by the U.S. Army Corps of Engineers to be waters of the U.S. The majority of the proposed fill will result from construction of creek crossings necessary for property access. Other fill would be used to create buildable housing pads. Permanent discharges of fill to waters of the State are proposed as follows:

Areas of Proposed Fill	Waters of the U.S. and State (acres)	Non-federal Waters of the State
Freshwater Marsh	0.55	-
Southern Willow Scrub	0.54	-
Mule fat scrub	0.02	
Streambed	1.11	0.17 acres (745 linear feet)
TOTAL ACRES	2.22	0.17

5. The discharge of fill into an additional 80 linear feet of non-federal waters on-site was previously considered in Order No. R9-2002-0014 *Waste Discharge Requirements And Section 401 Water Quality Certification For Calavera Hills II, LLC And City of Carlsbad Calavera Hills Master Plan Phase II & Bridge And Thoroughfare District No. 4 & Detention Basins, San Diego County*.
6. The City of Carlsbad approved a final Environmental Impact Report (SCH no. 2002101081) on December 7, 2004 for the two developments, which were evaluated as a single project under CEQA. The Notice of Determination was issued on December 8, 2004. At the time of CEQA approval, a final stormwater management plan had not been approved by the City of Carlsbad. The EIR identified the following mitigation measures to reduce project impacts to water quality and beneficial uses to below a level of significance:
- Comply with State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity;
 - Impacts to wetland communities will be mitigated at a 3:1 ratio;
 - A long-term maintenance and biological monitoring program will be defined, approved by wildlife agencies, and funded; and
 - Stream and pond monitoring for water quality will be conducted through the San Diego stream team or other such means to assure that if there is polluted runoff, adaptive management action will be taken.
7. The discharge of fill into areas to support housing and roads will eliminate beneficial uses and may contribute to conditions of contamination, pollution or nuisance downstream of the

fill areas. The discharge of fill into areas to provide energy dissipation threatens to affect WARM and WILD beneficial uses. Plans and programs to implement the water quality mitigation measures of the EIR have been revised since adoption of the EIR and/or were not finalized at the time of adoption.

8. Waste discharge requirements to mitigate and compensate for the loss of beneficial uses and threats to water quality resulting from the discharge of fill material to waters of the State are necessary to implement the regional water quality control plan.
9. The discharger has proposed mitigation for the discharge of fill to on-site receiving waters through the on-site creation of 3.54 acres and enhancement of 8.72 acres of waters of the U.S., consisting of fresh water marsh, southern willow scrub, and non-wetland streambed plant communities. The proposed *Conceptual Mitigation and Monitoring Plan for the Development on the Cantarini Ranch and Holly Springs Properties* (RECON, Revised August 15, 2005) will adequately compensate for impacts to waters of the U.S. and non-federal waters of the State associated with the discharge of dredged and fill material. This Order requires the discharger to proceed with the proposed mitigation plan.
10. The discharger has proposed to implement a plan for the management of stormwater discharges associated with the proposed project (*Storm Water Management Plan for Cantarini Ranch Tentative Map*, O'Day Consultants, Inc. October 31, 2005). Such discharges may threaten beneficial uses through the discharge of urban runoff pollutants (e.g., oil and grease, heavy metals, pathogens, nutrients, and trash) into tributaries to Agua Hendionda Creek. To mitigate the post-construction threats to water quality from stormwater discharges, the discharger proposes to implement a combination of vegetated swales, catch basin inlet filters, a detention basin, and an infiltration trench in various portions of the property.
11. The discharger has proposed to implement management measures to mitigate effects of hydromodification and control subsequent nonpoint source (NPS) pollution. Proposed measures consist of plans, practices, technologies, and other alternatives as generally described in *Storm Water Management Plan for Cantarini Ranch Tentative Map*, (O'Day Consultants, Inc. October 31, 2005) and *Conceptual Mitigation and Monitoring Plan for the Development on the Cantarini Ranch and Holly Springs Properties* (RECON, Revised August 15, 2005).
12. Construction activities associated with the proposed discharges of fill would threaten beneficial uses on-site and downstream. Prior to construction the discharger, or subsequent owner/operator, would be required to submit a Notice of Intent to the State Water Resources Control Board for coverage under State Water Resources Control Board (State Water Board) Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRs) For Discharges Of Storm Water Runoff Associated With Construction Activity. The discharger has committed to implement a Storm Water Pollution Prevention Plan (SWPPP) as required by Order No. 99-08-DWQ that would provide adequate measures to abate threats to water quality and

beneficial uses. The Regional Board may conduct inspections to verify SWPPP implementation.

13. This Order specifies Waste Discharge Requirements (WDRs) that are necessary to adequately address impacts to water quality standards resulting from the filling of waters of the U.S. and waters of the State, to meet the objectives of the State Wetlands Conservation Policy (Executive Order W-59-93), to be consistent with the antidegradation provisions of State Board Resolution No. 68-16, and to accommodate and require appropriate changes over implementation of the project and its construction.
14. The *Comprehensive Water Quality Control Plan for the San Diego Basin (9) (Basin Plan)* was adopted by the Regional Board on September 8, 1994. Subsequent revisions to the Basin Plan have also been adopted by the Regional Board and approved by the State Board. The Basin Plan designates beneficial uses, narrative and numerical water quality objectives, and prohibitions which are applicable to the discharges regulated under this Order. The project, as described in this Order, will not result in State Water Quality Standards being exceeded.
15. The dischargers have avoided and minimized impacts to waters of the U.S. consistent with the requirements of the Basin Plan.
16. These requirements for the discharge of fill material are feasible because they have been proposed by the discharger and/or reflect mitigation conditions incorporated into the approved Environmental Impact Report.
17. The Regional Board has notified the discharger and other interested persons and agencies of its intent to prescribe Waste Discharge Requirements and Section 401 Water Quality Certification and has provided them with an opportunity for public hearing and an opportunity to submit written comments.
18. The Board, in a public meeting on December 14, 2005, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that Bentley-Monarch J.V. / BENTEQ (hereinafter Discharger), in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

A. PROHIBITIONS

1. The discharge of waste in a manner other than as described in the findings of this Order is prohibited unless the discharger obtains revised waste discharge requirements that provide for the proposed change prior to the discharge occurring.
2. The discharge of fill material in a manner that has not been described in the application / report of waste discharge and for which valid waste discharge requirements are not in force are prohibited.
3. The discharge of waste shall not create a condition of pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code.
4. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by separate National Pollutant Discharge Elimination System (NPDES) requirements are prohibited.
5. The discharge of sand, silt, clay, or other earthen materials from any activity in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.
6. The unauthorized discharge of treated or untreated sewage to waters of the State or to a storm water conveyance system is prohibited.
7. The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board or State Water Board.

B. PROJECT PROVISIONS

1. Standard conditions applicable to 401 Water Quality Certification:
 - a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC §13330 and 23 CCR §3867.
 - b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR §3855(b) and that application specifically identified that a

FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- c. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR §3833 and owed by the dischargers.
2. This Section 401 Water Quality Certification is valid only until the expiration of the associated U.S. Army Corps of Engineers Section 404 individual permit.
3. Any proposed change in construction that may alter flow patterns and/or change the approved impact footprint is prohibited without Regional Board approval. Not later than 30 days prior to the beginning of any proposed change, the Discharger shall submit, acceptable to the Regional Board, detailed plans and specifications showing the proposed change in relationship to the approved project.
4. Stream crossing structures for the proposed “A” and “J” streets shall provide substrate and capacity for effective wildlife movement by incorporating soft-bottom crossings and an openness dimension factor of 0.6 (i.e., height x width/length >0.6).
5. All waters of the United States and State that are to be preserved shall be fenced no less than 10 days prior to the start of any project activities. A qualified biologist shall show all preservation areas to all appropriate construction personnel and shall explain the conditions of this Order and other permits regarding impacts.
6. The Discharger shall staff a qualified biologist on site during project construction to ensure compliance with the certification requirements. The biologist shall be given the authority to stop all work onsite if a violation occurs or has the potential to occur. No later than 30 days prior to the start of the project, the dischargers shall submit, acceptable to the Regional Board, the name(s) and qualification(s) of the qualified biologist(s) (defined as possessing a college degree in the biological sciences and at least 5 years restoration experience in southern California) responsible for compliance with the requirements of this Order.
7. No plant species on the most recent California Invasive Plant Council (Cal-IPC) List, "Exotic Pest Plants of Greatest Ecological Concern in California"¹ shall be planted in mitigation areas, waters of the State, vegetated stormwater BMP areas, or other areas used to convey urban runoff and stormwater.
8. The Discharger shall notify the Regional Board in writing at least 15 days prior to actual start dates for project grading and shall identify areas selected as reference locations for mitigation performance criteria. Those locations shall be clearly identified on a map that also shows the site plan. The Regional Board shall be provided access to those locations during any site inspection.

¹ The Cal-IPC list may be found on-line at <http://www.cal-ipc.org/>.

9. The Discharger shall comply with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity.
10. To assess the effectiveness of the BMPs implemented pursuant to Project Provision B.9, the Discharger will develop and implement a sediment/siltation monitoring plan to measure sediment loads above and below the project site during the construction phase. Sediment/Siltation monitoring shall continue until such a time that a Notice of Termination (NOT) is processed and coverage under Order 99-08-DWQ is terminated.
11. The Discharger shall develop and implement a five-year Water Quality Monitoring Program to evaluate the effectiveness of the proposed urban runoff and stormwater BMPs for pollutants/stressors contained in the SWRCB 2002 Monitoring List for Agua Hedionda Creek. Monitoring shall begin no later than 90 days after first occupancy within the project tracts. Monitoring and reporting shall be conducted in accordance with Section C of the Monitoring And Reporting Program No. R9-2005-0230. A draft monitoring plan shall be submitted to the Regional Board for review at least 21 days prior to the discharge of fill.
12. When water quality monitoring demonstrates that implemented BMPs are not protective of water quality objectives or beneficial uses, the Discharger shall investigate and implement remedial measures (e.g., increased BMP maintenance, additional or replacement BMPs, etc.).

C. MITIGATION PROVISIONS

1. Mitigation for permanent impacts to 2.39 acres of federal and non-federal waters of the State will be achieved by a combination of creation and enhancement waters of the U.S./State, consisting of fresh water marsh, southern willow scrub, and non-wetland streambed plant communities in general accordance with the *Conceptual Mitigation and Monitoring Plan for the Development on the Cantarini Ranch and Holly Springs Properties* (RECON, Revised August 15, 2005).
 - a. No less than 3.54 acres of waters of the waters of the U.S./State shall be created and no less than 8.72 acres of waters of the U.S./State shall be enhanced.
 - b. Mitigation activities shall restore habitat, biogeochemical/water quality, and hydrologic functions sufficient to support wildlife and non-contact recreational beneficial uses.
 - c. The construction of proposed mitigation shall be completed within 18 months following initiation of fill activities.
2. No later than 30 days prior to the start of the project, the Discharger shall submit to the Regional Board for review a *Final Mitigation and Monitoring Plan* that fully complies with all relevant conditions and requirements of this Order and the associated Monitoring and Reporting Program. The final plan shall include the following objectives:

- a. The final plan shall be consistent with the objectives of the *Conceptual Mitigation and Monitoring Plan for the Development on the Cantarini Ranch and Holly Springs Properties* (Recon, Revised August 15, 2005) and the *Mitigation and Wetland Functional Analysis for Jurisdictional impacts on the Cantarini Ranch and Holly Springs Properties* (Recon, August 15, 2005);
 - b. Success criteria shall require that all mitigation areas must exhibit signs or evidence of increased beneficial uses for wildlife (avian and aquatic) for two consecutive years, commencing after restoration, creation, or enhancement activities are complete;
 - c. All mitigation areas must exhibit evidence of natural recruitment of native wetland and/or riparian species within 1 year of cessation of mitigation activities;
 - d. All mitigation areas must be self-sustaining after 5 years of maintenance and monitoring. Self sustaining is defined as “restored habitats that do not require maintenance, supplemental irrigation, and additional planting, and are occupied by, and support, the appropriate plant and animal species”; and
 - e. Mitigation areas shall not receive untreated urban runoff or stormwater from the proposed development during the construction or post-construction phases.
3. The Final Mitigation and Monitoring Plan shall include, but not be limited to, the following:
 - a. Proposed channel designs and earthwork for all mitigation areas, including appropriate cross sections and plan views;
 - b. A detailed planting plan, including species lists, plant sizes and numbers, and planting designs and a description and map of the reference locations;
 - c. Specific details and plans for all creek sections that will be culverted, bridged, or otherwise crossed or immediately adjoined by paths, structures, or similar improvements;
 - d. The addition of monitoring methods for structural diversity and topographic complexity to the Conceptual Monitoring Plan; and
 - e. The Final Plan shall also include interim and final qualitative and qualitative functional success criteria.
4. The Discharger shall implement the Final *Mitigation and Monitoring Plan* as modified by the Regional Board to assure compliance with this Order. The final Monitoring Plan shall be consistent with Monitoring and Reporting Program No. R9-2005-0230.

5. If mitigation areas do not meet their interim and/or ultimate success criteria, as defined in the Mitigation and Monitoring Plans, the Discharger shall prepare remedial measures, acceptable to the Regional Board, to be implemented within one year following the determination that success criteria were not reached.
6. Prior to January 1, 2007 the Discharger shall submit proof of a completed preservation mechanism (e.g. deed restriction, conservation easement, etc.) to the Regional Board that will protect all mitigation areas and their buffers in perpetuity. The conservation easement or other legal limitation on the mitigation property shall be adequate to demonstrate that the site will be maintained without future development or encroachment on the site or which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the State/U.S. that it supports. The conservation easement or other appropriate legal limitation shall prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, paved maintenance roads, and areas of maintained landscaping for recreation.
7. The Discharger shall submit an as-built report within 60 days after complete installation of the mitigation. The as-built report shall contain final grade and topography elevations, planted areas and palette, and areas designated for natural plant recruitment.
8. If at any time during the implementation and establishment of the mitigation area(s), and prior to verification of meeting success criteria, a catastrophic natural event (e.g., fire, flood) occurs and impacts the mitigation area, the Discharger shall be responsible for repair and replanting of the damaged area(s).
9. For purposes of this certification, creation is defined as the creation of vegetated or unvegetated waters of the U.S. where they have never been documented or known to occur (e.g., conversion of nonnative grassland to freshwater marsh). Restoration is defined as the creation of waters of the U.S. where they previously occurred (e.g., removal of fill material to restore a drainage). Enhancement is defined as modifying existing waters of the U.S. to enhance functions and values (e.g., removal of exotic plant species from jurisdictional areas and replacing with native species).

D. POST CONSTRUCTION STORMWATER TREATMENT PROVISIONS

1. All storm drain inlet structures within the project boundaries shall be stamped and/or stenciled with appropriate language prohibiting non-storm water discharges.
2. Best management practices (BMPs) shall be implemented to treat stormwater runoff from all roofs, roads, parking areas, and other impervious areas where activities are expected to generate pollutants that can be conveyed by stormwater to the storm drain system and/or waters of the State and/or U.S. Post-construction stormwater BMPs shall be designed to

mitigate (infiltrate, filter, and/or treat), prior to discharging to receiving waters, the volume of runoff produced by all storms up to and including the 24-hour, 85th percentile storm event for volume-based BMPs and/or the 1 hour, 85th percentile multiplied by a factor of two for flow-based BMPs, as determined from the local historical rainfall record.

3. Post-construction BMPs shall be implemented in accordance with plans submitted to the Regional Board, including *Storm Water Management Plan for Cantarini Ranch Tentative Map* (O'Day Consultants, Inc. October 31, 2005).
4. Post-construction BMPs must be installed and functional prior to occupancy and/or planned use of development areas.
5. Homeowner Awareness. The Discharger shall provide each lot purchaser with a lot map that clearly distinguishes the location and purpose of stormwater site design, pollution prevention, and treatment BMP features (e.g., disconnected rooftop drains, on-site infiltration areas, etc.) for the lot and subdivision (swales, inlet filters, and detention basin).
6. Maintenance. All post-construction structural BMPs, including, but not limited to, the detention basin, inlet filters, and vegetated swales shall be regularly inspected and maintained for the life of the project per manufacturers' specifications for proprietary structural devices and at frequencies no less than recommended by CASQA guidance for non-proprietary measures, including the vegetated swales and the detention basin.
 - a. A copy of the City-approved Operations and Maintenance Plan for the post-construction stormwater treatment BMPs shall be submitted to the Regional Board prior to initiation of construction activities;
 - b. Treatment BMPs shall be inspected monthly and after every storm event exceeding 0.5 inches of precipitation;
 - c. Preventive and corrective maintenance procedures will be performed as outlined in the Operations and Maintenance Plan;
 - d. Records shall be kept regarding inspections and maintenance in order to assess the performance of the systems and determine whether adaptations are necessary to protect receiving waters;
 - e. The discharger shall be responsible for inspection and maintenance of all post-construction structural BMPs until such responsibility is legally transferred to the local homeowners association or other entity;
 - f. At the time maintenance responsibility for post-construction BMPs is legally transferred, the discharger shall submit to the Regional Board a copy of such documentation; and

- g. At the time maintenance responsibility for post-construction BMPs is legally transferred, the discharger shall provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer specifications.

E. STANDARD PROVISIONS

1. The Discharger shall notify the Regional Board by telephone within 24 hours whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to CWC §13267(b), a written notification of the adverse condition shall be submitted to the Board within one week of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Regional Board, for the remedial actions.
2. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations. Sediment shall not be removed or disposed in a manner that will not cause water quality degradation.
3. This Order is not transferable to any person except after notice to the Regional Board. In accordance with CWC §13260, the dischargers shall file with the Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. The notice must include a written agreement between the existing and new dischargers containing a specific date for the transfer of this Order's responsibility and coverage between the current dischargers and the new dischargers. This agreement shall include an acknowledgment that the existing dischargers is liable for violations up to the transfer date and that the new dischargers is liable from the transfer date on. Any proposed material change in operation shall be reported to the Regional Board at least 30 days in advance of the proposed implementation of any change. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the project site. For the purpose of this Order, this includes any proposed change in the boundaries of the wetland/waters of the United States fill sites. The Regional Board may require modification or revocation and reissuance of this Order to change the name of the dischargers and incorporate such other requirements as may be necessary under the California Water Code.
4. The Discharger shall maintain a copy of this Order at the project site so as to be available at all times to site operating personnel and agencies.
5. The Discharger shall permit the Regional Board or its authorized representative at all times, upon presentation of credentials:

- a. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept;
 - b. Access to copy any records required to be kept under the terms and conditions of this Order;
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order; and
 - d. Sampling of any discharge or surface water covered by this Order.
6. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
7. The Regional Board will consider rescission of this Order upon notification of successful completion of mitigation for all creation, restoration, and enhancement projects required or otherwise permitted now or subsequently under this Order, completion of project construction, and the Regional Board's acceptance of these notifications. Determination of mitigation success will be based on the provisions discussed in Section C, Mitigation Provisions of this Order and in Section B, Mitigation Monitoring, located within the Monitoring and Reporting Program.
8. The Discharger must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for (a) enforcement action; (b) termination, revocation and reissuance, or modification of this Order; and/or (c) denial of a report of waste discharge in application for new or revised waste discharge requirements.
9. The Discharger shall report any noncompliance which may endanger health or the environment. Any such information shall be provided orally to the Regional Board within 24 hours from the time the dischargers becomes aware of the circumstances. A written submission shall also be provided within five days of the time the dischargers becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The Regional Board, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
10. The Dischargers shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this Order, including such accelerated or

additional monitoring as may be necessary to determine the nature and impact of the noncompliance.

11. In an enforcement action, it shall not be a defense for the dischargers that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this Order. Upon reduction, loss, or failure of the treatment facility, the dischargers shall, to the extent necessary to maintain compliance with this Order, control production or all discharges, or both, until the facility is restored or an alternative method of treatment is provided. This provision applies for example, when the primary source of power of the treatment facility is failed, reduced, or lost.
12. This Order may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:
 - a. Violation of any terms or conditions of this Order;
 - b. Obtaining this Order by misrepresentation or failure to disclose fully all relevant facts;
or
 - c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
13. The filing of a request by the dischargers for the modification, revocation and reissuance, or termination of this Order, or notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

F. REPORTING AND RECORD KEEPING REQUIREMENTS

1. The Discharger shall submit copies of all necessary approvals and/or permits for the project and mitigation projects from applicable government agencies, including, but not limited to, the California Department of Fish and Game, U.S. Fish and Wildlife Service, and U.S. Army Corps of Engineers, prior to the start of clearing/grading.
2. The Discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. This period may be extended during the course of any unresolved litigation regarding this discharge or when requested by the Regional Board.
3. The Discharger shall furnish to the Regional Board, within a reasonable time, any information which the Regional Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order. The Dischargers shall also

furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

4. Where the Discharger becomes aware that they failed to submit any relevant facts in a Report of Waste Discharge or submitted incorrect information in a Report of Waste Discharge or in any report to the Regional Board, it shall promptly submit such facts or information.
5. All reports or information submitted to the Regional Board shall be signed and certified as follows:
 - a. Reports of Waste Discharge shall be signed as follows:
 - i. For a corporation – by a principal executive officer or at least the level of vice-president.
 - ii. For a partnership or sole proprietorship – by a general partner or the proprietor, respectively.
 - iii. For a municipality or other public agency – by either a principal executive officer or ranking elected official.
 - b. All reports required by this Order and other information required by the Regional Board shall be signed by a person designated in paragraph (a) of this provision, or by a duly authorized representative of that person. An individual is a duly authorized representative only if:
 - i. The authorization is made in writing by a person described in paragraph (a) of this provision; and
 - ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity; and
 - iii. The written authorization is submitted to the Regional Board.
 - c. Any person signing a document under this Section shall make the following certification All reports required by this Order and other information required by the Regional Board shall be signed by a person designated in paragraph (a) of this provision, or by a duly authorized representative of that person.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

6. The dischargers shall submit reports required under this Order, or other information required by the Regional Board, to:

Executive Officer
California Regional Water Quality Control Board

San Diego Region
Attn: 401 Certification; File No. WPN:18-2003087:haasj
9174 Sky Park Court, Suite 100
San Diego, California 92123

G. NOTIFICATIONS

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.
2. This Order does not convey any property rights of any sort or any exclusive privileges. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property, nor protect the dischargers from liability under federal, state or local laws, nor create a vested right for the dischargers to continue the waste discharge.
3. These requirements have not been officially reviewed by the United States Environmental Protection Agency and are not issued pursuant to Section 402 of the Clean Water Act.
4. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.
5. The adoption of these waste discharge requirements constitutes certification of water quality certification for the project as described in this Order pursuant to Section 401 of the Clean Water Act. The Regional Board hereby certifies that the proposed discharge from the **Cantarini Ranch/Holly Springs Project** (401 project no. 03C-087) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act.

This Order becomes effective on the date of adoption by the Regional Board

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on December 14, 2005.

TENTATIVE
JOHN H. ROBERTUS
Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TENTATIVE MONITORING AND REPORTING PROGRAM NO.
R9-2005-0230**

for

BENTLEY-MONARCH J.V. / BENTEQ,

**CANTARINI RANCH
AND
HOLLY SPRINGS PROJECTS**

CARLSBAD, SAN DIEGO COUNTY

A. CONSTRUCTION-PHASE MONITORING AND REPORTING

1. Construction BMP monitoring reports shall be submitted quarterly during all grading activities associated with the proposed project, including the extension of College Boulevard. Construction monitoring reports shall include, but not be limited to the following:
 - a. Names, qualifications, and affiliations of the persons contributing to the report;
 - b. Summary of construction activities that include general locations, project component (e.g., Cantarini or Holly Springs, College Boulevard, mitigation site), approximate acreage;
 - c. Quantification of impacts to waters of the U.S. and waters of the State authorized under this Order;
 - d. Dates, times, and names of qualified biologist(s) onsite;
 - e. Summary of any problems, resolution, and notification that occurred during this monitoring period;
 - f. Results from sediment/siltation monitoring described in section A.2. below; and
 - g. Photodocumentation, if necessary, of construction activities.
2. Bentley-Monarch J.V. / Benteq shall monitor and report on sediment loading above and below the project as described below:

- a. Samples to be taken upstream of the of the construction areas, and immediately downstream of the last point of discharge from the project;
 - b. Samples to be analyzed for Settleable Solids (mL/L using EPA 160.5) and Total Suspended Solids (mg/L using EPA 160.2);
 - c. Sediment /siltation monitoring to occur after every significant rainfall where storm water runoff discharges from the Cantarini Ranch or Holly Springs projects into Agua Hedionda Creek or its tributaries. Sample collection does not need to be performed upstream/downstream for more than three (3) rain events per month; and
 - d. Sediment/siltation monitoring reports shall be submitted quarterly covering the preceding 3 months, until such a time that a Notice of Termination (NOT) is processed and coverage under Order 99-08-DWQ is terminated.
3. Construction BMP Evaluation and Maintenance: Bentley-Monarch J.V. / Benteq shall immediately assess the results of each sampling event, and if the results of the downstream site show an increase greater than 5 percent above background (upstream site) sediment levels, Bentley-Monarch J.V. / Benteq shall conduct an immediate assessment of erosion and sediment control BMPs being implemented on-site and:
- a. Identify the source of the silt, sediment;
 - b. Repair or replace any BMP that has failed;
 - c. Maintain any BMP that is not functioning properly due to lack of maintenance;
 - d. Evaluate whether additional or alternative BMPs should be implemented to prevent further exceedences of background sediment levels; and
 - e. Report to the Regional Board within 5 working days the actions taken to remedy the situation.

B. MITIGATION MONITORING AND REPORTING

1. Mitigation monitoring shall follow the *Conceptual Mitigation and Monitoring Plan for the Development on the Cantarini Ranch and Holly Springs Properties* (Recon, Revised August 15, 2005) and the *Mitigation and Wetland Functional Analysis for Jurisdictional impacts on the Cantarini Ranch and Holly Springs Properties* (Recon, August 15, 2005). In addition, quantitative monitoring shall be developed, conducted, and reported for the structural diversity and topographic complexity functional criteria as defined in the *Functional Analysis* report.
2. Mitigation monitoring shall occur, at a minimum, quarterly during the first year following installation of mitigation areas, semi-annually during the second and third years, and annually

until mitigation has been determined to be successful (as defined in the provisions of this Order), and mitigation success has been agreed to in writing by the Regional Board and the U.S. Army Corps of Engineers. Monitoring shall begin immediately after the completion of the first planting period.

3. Mitigation monitoring reports shall be submitted annually until mitigation has been deemed functionally successful. Monitoring reports shall be submitted no later than 30 days following the end of the monitoring period. Monitoring reports shall include, but not be limited to, the following:
 - a. Names, qualifications, and affiliations of the persons contributing to the report;
 - b. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
 - c. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions, previous mitigation monitoring results, and reference site conditions;
 - d. Survey report documenting boundaries of mitigation area with respect to the development;
 - e. Identify deviations from the mitigation plan that occurred because of field conditions during construction;
 - f. Photodocumentation from established reference points; and
 - g. Other items specified in the final Mitigation Plan and Functional Analysis.

C. WATER QUALITY MONITORING AND REPORTING

1. Receiving waters monitoring program reports shall be submitted annually for no less than 5 years following initial residential occupancy.
2. Water quality samples shall be collected every two months during the first year of residential occupancy, and quarterly for no less than 4 years thereafter. The program shall include water quality sampling and analysis for nitrogen and phosphorus nutrients (NH₃, NO₃-N, NO₂-N, TKN, ortho-Phosphorus, and total Phosphorus) and physicochemical constituents (pH, temperature, electrical conductance, dissolved oxygen). At a minimum, replicate samples shall be collected during each event from one receiving water location downstream and representative of the Holly Springs development in lot 117 (open space), one receiving water location downstream of the bridge intersection of streets "A" and "D" (Lot 68), and at one stormdrain outfall that receives runoff from no less than 15 residential units on the Cantarini Ranch development..

3. Sampling, analysis, and quality assurance / quality control must be conducted in accordance with the Quality Assurance Program Plan (QAPP) for the State of California Surface Water Ambient Monitoring Program, adopted by the State Water Resources Control Board².

All Monitoring Reports shall be submitted to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
401 Certification; File No. WPN:18-2003087:haasj
9174 Sky Park Court, Suite 100
San Diego, Ca 92123

Ordered by: _____TENTATIVE_____
JOHN H. ROBERTUS
Executive Officer

² The QAPP can be downloaded from the SWRCB web page at <http://www.waterboards.ca.gov/swamp>